

(c) No, Sir. The powers to be vested on the PRIs are enshrined in Part IX of the Constitution. The Ministry of Panchayati Raj continues to impress upon State Governments, through a process of mutual consultations and consensus, the need to devolve powers to Panchayati Raj Institutions as mandated by the Constitution. Considerable progress has been registered in this regard over the last three years, details of which are available in the Report on "The State of Panchayats- A Mid-Term Review and Appraisal" tabled in both Houses of Parliament on 23 November 2006.

PESA Act 1996 in Chhattisgarh

3105. SHRI NANDI YELLAIAH: Will the Minister of PANCHAYATI RAJ be pleased to state:

(a) the details of law pertaining to provisions of Panchayats (Extension to the Scheduled Areas) Act of 1996;

(b) present status of implementation of the Act and the recommendations submitted by the Scheduled Tribes Commission to the Union Government on 16th July, 2004 with regard to Dantewara District, Bastar of Chhattisgarh and all the other Tribal Districts of Chhattisgarh, Orissa and Andhra Pradesh;

(c) whether Government would constitute a Parliamentary Committee for studying the grave situation of Tribal population in India through various angles for immediate policy and executive measures; and

(d) if not, the reasons therefor?

THE MINISTER OF PANCHAYATI RAJ (SHRI MANI SHANKAR AIYAR): (a) The Constitution (Seventy-third Amendment) Act, 1992, by which a new Part IX was added in the Constitution to enshrine therein certain basic and essential features of the Panchayati Raj Institutions (PRIs) to impart certainty, continuity and strength to them, came into force on 24-4-1993.

The bulk of the tribal population lives in Fifth Schedule and Sixth Schedule Areas. These are described in the Constitution as Scheduled Areas and Tribal Areas, respectively. In so far as these Areas are concerned, Article 243M (4) (b) in Part IX of the Constitution, provides that Parliament may, by law, extend the provisions of Part IX to these Areas subject to such exceptions and modifications as may be specified in such law. There

were persistent demands from prominent leaders of the Scheduled Areas for extending the provisions of Part IX to these Areas so that PRIs may be established there. A Committee of Experts, known as Bhuria Committee, including some Members of Parliament, was appointed in 1994. This Committee, which was known as, gave its Report in January, 2005.

Based on the Report of this Committee, the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) was passed and came into effect on 24th December, 1996. PESA is applicable to Fifth Schedule Areas only.

Basic Features of PESA:

- (i) PESA extends Part IX of the Constitution of Fifth Schedule Areas, subject to certain exceptions and modifications.
- (ii) It has been laid down that every village will have a Gram Sabha which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution.
- (iii) The offices of the Chairpersons in the Panchayats at all levels shall be reserved for STs.
- (iv) The Reservation of Seats at every Panchayats for the STs shall not be less than 50% of the total seats of members.

Mandatory executive, functions and responsibilities:

Gram Sabha will approve plans, programmes and projects before they are taken up for implementation by the Panchayat at the village level, it would identify beneficiaries of poverty alleviation and other programmes and issue certification of utilization of funds by the Panchayat at the village level for the above programmes. Planning and management of minor water bodies will be done by the Panchayats.

Mandatory consultation:

Before making acquisition of land in the Schedule Areas for development projects and before resettling rehabilitated persons affected by such projects, Gram Sabha or the Panchayat at the appropriate level shall be consulted.

Mandatory recommendations:

The recommendations of the Gram Sabha or the Panchayat at the appropriate level is mandatory required prior to grant of prospecting license or mining lease for minor minerals. Similarly, prior recommendations is required for grant of concession for the exploitation of minor minerals by auction.

(v) A duty has been cast on the State Legislatures to ensure that Panchayats at the appropriate level and the Gram Sabha are endowed specifically with such powers and authority as enable them to function as institutions of self government. These are:

- (a) power to enforce prohibition;
- (b) ownership of minor forest produce;
- (c) power to prevent alienation of land;
- (d) power to manage village markets;
- (e) power to exercise control over money lending;
- (f) power to exercise control over institutions and functionaries in all social sector; and
- (g) power to control local plans and resources for such plans including tribal sub-plans.

(vi) The Act prohibits Panchayats at the higher level to assume the powers and authority of any Panchayat at the lower level.

(vii) The Act provides that any provision of any law which is inconsistent with its provisions shall cease to be in force at the expiry of one year from the date on which the Act receives the assent of the President. (24.12.1996)

(b) The following nine States have Fifth Schedule Areas:-(i) Andhra Pradesh (ii) Chhattisgarh (iii) Gujarat (iv) Himachal Pradesh (v) Jharkhand (vi) Madhya Pradesh (vii) Maharashtra (viii) Orissa and (ix) Rajasthan.

The Ministry of Panchayati Raj is mandated to dialogue with states on all issues relating to the Panchayats (Extension to the Scheduled Areas) Act (PESA)-1996. While the actual policies and programmes in respect of PESA are conceived and implemented by the states, MoPR provides broad direction and back up support on policy issues, capacity building and training of government agencies and staff. The Third Round Table Conference of Group of Panchayati Raj Ministers held in Raipur on 23-24 September 2004 passed resolutions to implement various provisions of PESA in its letter and spirit.

While all States have enacted the requisite compliance legislations by amending their respective Panchayati Raj Acts, certain gaps continue. Most States are also yet to amend the subject laws, like those relating to money lending, forest, excise, etc. Vital issues like the ownership of minor forest produce, planning and management of minor water bodies, prevention of alienation of tribal lands etc., which have been duly recognized in PESA as the traditional right of tribals living in the Scheduled Areas have still not received the warranted attention and the necessary correctives remain unapplied. There are also issues relating to powers statutorily devolved upon the Gram Sabha and the Panchayats, not being matched by concomitant transfer of funds and functionaries resulting in the non-exercise of such powers.

To accelerate the implementation of PESA a conference was organized on 14.7.2006 in which the Secretaries of the Department of Panchayati Raj, Tribal Development, Commissioners of Tribal Area Development, Heads of Tribal Research Institutes, Tribal Development Corporations and concerned Central Ministries were invited. Three Sub Groups were formulated to:-

- i. study issues relating to Minor Forest Produce in the PESA States
- ii. suggest remedial action, wherever required, with respect of land alienation, displacement, rehabilitation, R&R etc. in the PESA States
- iii. to draft model guidelines to vest Gram Sabhas with powers as envisaged in the PESA.

Reports of the three Sub-Groups have been submitted and have been circulated to the states for comments. While the three Sub Groups examined the issues of competence of Gram Sabha, ownership of Minor Forest Produce, land alienation and minor minerals an important aspect in the process of implementation of PESA is to make various central and State laws consonant with the provisions of PESA.

The matter has been discussed repeatedly at the meetings of Secretaries of Panchayati Raj. The Ministry of Panchayati Raj had also entrusted to the Indian Law Institute the formulation of appropriate amendments in the concerned State laws. This has been a major exercise wherein amendments have been drafted for all the State laws (minor and major)

that impinge upon the subjects relating to PESA. Many hundreds of State laws of the PESA states have been thoroughly examined, and amendments forwarded to the States. State Governments are carrying out the exercise in consultation with their respective Departments of Law and the line departments. There is an urgent need to expedite the process of changing these laws by the State.

Regarding the recommendations submitted by the Scheduled Tribes commission to the Union Government on 16th July, 2004 with regard to Dantewara District, Bastar of Chhattisgarh and all the other Tribal Districts of Chhattisgarh, Orissa and Andhra Pradesh, the Ministry of Tribal Affairs has communicated that the recommendations submitted by the Scheduled Areas and Scheduled Tribes Commission to Union Government have been forwarded to all concerned Department/Ministries/States for follow up action.

(c) and (d) As there is already a Standing Committee and a Consultative Committee attached to the Ministry of Tribal Affairs, as also similar arrangements with the Ministry of Panchayati Raj, it is not present proposed to constitute any other Parliamentary Committee.

Women representation and empowerment in Panchayats

3106. SHRIMATI N.P.DURGA: Will the Minister of PANCHAYATI RAJ be pleased to state:

(a) whether it is a fact that of the total 26 lakh elected Panchayat representatives, more than 10 lakh are women;

(b) if so, whether it means that more than 42 percent of women are elected in Panchayats;

(c) if so, whether his Ministry found any change in the profile of rural leadership in rural areas, particularly women;

(d) whether it has come to the notice of his Ministry that though there are elected women in Panchayats, still they are discriminated or dominated by the male members of villages; and

(e) if SO, what his Ministry is doing to really empower women in Panchayats?